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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054

In the Matter of	)	
	)	
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147
	)	
Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	)	CC Docket No. 96-98
	)	
Applications for Consent to the Transfer of Control of Licenses and Section 214 Authorizations from AMERITECH CORPORATION, Transferor to SBC COMMUNICATIONS INC., Transferee	)	CC Docket No. 98-141
	)	
Common Carrier Bureau and Office of Engineering and Technology Announce Public Forum on Competitive Access to Next-Generation Remote Terminals	)	NSD-L-00-48 DA 00-891

COMMENTS OF JATO COMMUNICATIONS CORP.

Jato Communications Corp. ("Jato") submits these comments in support of the Petition of the Association for Local Telecommunications Services ("ALTS") for a declaratory ruling with regard to broadband loop provisioning. Jato is a provider of broadband services, focused on serving customers in Tier II and III markets which have, to date, been largely ignored by Incumbent LECs. Jato primarily offers Symmetrical Digital Subscriber Line (SDSL) services to the small and medium sized business market. Deployment of SDSL, like the deployment of other xDSL technologies, requires access to copper facilities.

Jato agrees with ALTS that the Commission has taken several positive steps to encourage the deployment of advanced services nationwide. However, the unfortunate, yet predictable, reaction of the ILECs has been continued resistance to competition and the full-scale deployment of advanced services such as xDSL by refusing to efficiently provision loops for Jato. The declaratory ruling contemplated by the ALTS Petition would reinforce the Commission's existing rules, accelerate the deployment of advanced services to customer end-users and promote true competition in the market for telecommunications services. Further, such an action is necessary to stop the irreparable and immeasurable harm to the reputation of competitive carriers, including Jato, within the telecommunications industry that is resulting from the discriminatory, anti-competitive tactics of the ILECs.

I. CLECS MUST HAVE THE ABILITY TO ORDER AND OBTAIN TRANSMISSION FACILITIES IN A TIMELY AND EFFICIENT MANNER

The availability of copper loops is a critical component to widespread and timely deployment of service to Jato's customers. While critical, the copper loop itself is one of the simplest components of providing xDSL to customers, and the ILEC's provisioning of copper loops represents one of the simplest and least labor-intensive tasks involved in the turn-up of a customer.[1] Nevertheless, the intervals for ILEC provisioning of these loops usually represents the greatest delay to the Jato customer.

[1] ILEC provisioning of an xDSL capable copper loop to Jato, if conditioning is not required, involves no more work than providing a POTS line to a requesting carrier or an ILEC retail customer. An ILEC Central Office ("CO") technician need only move the loop from its current location to the appropriate frame address within the CO (a "cross-connect"). This cross-connect, and any associated testing, can be completed in a matter of minutes. Despite these facts, ILECs often demand higher non-recurring charges for xDSL loops than for POTS loops.

It has become clear that the ILECs' failure to provision copper loops for Jato and other competitors has less to do with technical and operational issues, and more to do with discriminatory, anti-competitive behavior. Without swift and certain enforcement of the Commission's rules, ILECs have no motivation to provide loops to their competitors at parity with their own retail operations. To do so would accelerate the exchange of retail customers for wholesale customers within their region, decreasing profit margins and strengthening the position of Jato and other competitive carriers.

The ILECs have instead enjoyed the distinct advantages of non-compliance. They have aggressively marketed their own Advanced Services while creating delays for their competitors, in an effort to ensure that the legacy of decades of monopoly will infect this relatively new market during the early years of its development. These delays have the added benefit for the ILECs of injuring the reputation of their competitors. Delays in provisioning inevitably lead to frustration among CLEC customers, regardless of fault. In sum, non-compliance represents a win-win situation for the Incumbents.

The difficulties surrounding the pre-qualification of customer loops are typical of the delays Jato routinely experiences in ordering loops from the ILECs. Many ILECs have failed to offer CLECs a mechanized qualification system and still employ a manual process. Some ILECs have begun to offer electronic access to loop information, but this information is often filtered from the data the ILEC provides for its retail operations, is incompatible with the Electronic Data Interface ("EDI"), or is not offered in real-time. The result of this continued failure on the part of the ILECs is a provisioning system rife with unnecessary delay for the CLEC customer end-user.

The barriers to robust competition in the Advanced Services market caused by ILEC non-compliance, if left unchecked, will continue to severely retard progress toward the goals of the Telecommunications Act of 1996, including the widespread availability of broadband services. Jato, for instance, specializes in serving markets that are underserved by the Incumbents, if they are served at all. When ILECs delay Jato's deployment efforts in violation of the Commission's orders, they are often denying consumers timely access to their only viable means of receiving broadband connectivity. In order to respond to the needs of these consumers, Jato must have timely access to the unbundled loop.

II. THE COMMISSION SHOULD REINFORCE ITS ADVANCED SERVICES ORDER BY ESTABLISHING CONCRETE GUIDELINES FOR LOOP CONDITIONING AND AFFIRMING THAT TELRIC PRINCIPLES SHOULD APPLY TO SUCH CONDITIONING

The conditioning of copper loops for xDSL services is also critical for Jato to serve a broader group of Americans with xDSL. Loop conditioning allows Jato to reach customers served by copper loops that contain intervening equipment or bridge tap. The Commission has recognized the importance of loop conditioning in the effort to expand the availability of xDSL, and has ordered the ILECs to provide this conditioning to requesting CLECs.[2] Despite this Order, Jato has experienced substantial and unnecessary delays to its requests that loop conditioning be performed.

Eliminating these delays is critical to the widespread availability of xDSL. ILECs will often refuse to provide xDSL service to retail customers served by loops requiring

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[2] *Deployment of Wireline Services Offering Advanced Telecommunications Capability,* CC Docket No. 98-147, First Report and Order, FCC 98-188 (rel. Aug. 7, 1998) (*"Advanced Services First Report and Order"*).

conditioning, abandoning them for customers on shorter loops that provide them a quicker return on their investment. Jato has continued to make its services available to all small and medium-sized business customers, including customers requiring loop conditioning, furthering the goals of the Act. Firm enforcement of the Commission's Order will accelerate the growing availability of xDSL nationwide.

The pricing charged by certain ILECs remains an additional obstacle to full deployment. Current and proposed ILEC pricing for the conditioning of copper loops suggests that some ILECs have priced loop conditioning in a manner calculated to frustrate competition, not to reflect TELRIC principles or even actual costs.[3]

This point is evident when comparing the loop conditioning charges of various ILECs. Bell Atlantic, BellSouth and SBC have proposed, and in some cases been successful in tariffing, rates for typical loop conditioning activities that range from several hundred dollars to two thousand dollars or more. In many cases, these charges apply to loops less than 18,000 feet in length.[4] In contrast, Sprint Local Telephone has adopted what it represents to be TELRIC-based charges for loop conditioning. There is

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[3] It is Jato's position that, under TELRIC methodology, requesting carriers would not incur charges for loop conditioning. Within the state-of-the-art network that TELRIC assumes, load coils, bridge tap and other intervening equipment would not exist. It is therefore inappropriate for requesting carriers to incur a charge for their removal. For a more complete discussion of this concept, see the Minnesota Public Utilities Commission's Order in Docket No. P-442, 5321, 3167, 466, 421/CI-96-1540, *In the Matter of a Generic Investigation of US West Communications, Inc.'s Cost of Providing Interconnection and Unbundled Network Elements* (Issued Mar. 15, 2000), and the Public Service Commission of Utah's Report and Order in Docket No.94-999-01, *In the Matter of an Investigation into Collocation and Expanded Interconnection* (Issued June 2, 1999). Both Orders deny stand-alone charges for loop conditioning, citing TELRIC principles. Even if ILECs are permitted to assess conditioning charges according to the costs of conditioning, as most of them argue, stand-alone charges are inappropriate. The costs incurred by ILECs for conditioning are already recovered through the recurring charges for that unbundled loop via the application of the maintenance cost factor inherent in the TELRIC cost modeling for that unbundled loop. The cost of removing load coils, bridge tap, etc. are booked to the maintenance account, and when modeling the recurring costs, the maintenance factor is derived from that maintenance account.

[4] See Bell Atlantic-New York Tariff No. 916, Section 5 (effective Mar. 18, 2000), SBC's Texas tariff filed Apr. 10, 2000, and Att. 2 of BellSouth's standard agreement.

no charge for the removal of equipment on loops less than eighteen kilofeet in length, and the charges for loops over eighteen kilofeet range from $5.74 to $6.96.[5]

The Commission can reinforce the *Advanced Services Order* in two ways. First, it can establish concrete, predictable, and reasonable guidelines for the qualification and conditioning of copper loops. This will promote continued deployment of xDSL by reducing the risk and uncertainty that currently surrounds serving customers on longer loops. Second, the Commission can definitively state that pricing for loop conditioning must adhere to its TELRIC rules.[6]

III. THE COMMISSION SHOULD ACT TO ENSURE THE CONTINUED AVAILABILITY OF COPPER LOOPS TO COMPETITORS

In order to foster the continued development of meaningful competition in the market for advanced services, the Commission should also take definitive steps to preserve the availability of the ILECs' existing copper infrastructure to competitive carriers. ILEC initiatives, such as Project Pronto, that intend to serve customers with a combination of copper and fiber optic facilities through the use of Remote Terminals ("RTs") are a severe threat to competition and innovation in the Advanced Services market if such initiatives replace, rather than augment, the existing network.[7] While useful to expand the reach of certain technologies, such as ADSL, RTs are unnecessary

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[5] See Sprint's standard agreement, Table 1-Rates. This pricing excludes underground loops, for which charges are higher. They remain, however, at or near the lower end of loop conditioning charges proposed by many other ILECs. In sum, Sprint's loop conditioning charges represent drastic, often exponential, savings for CLECs when compared to the typical conditioning charges demanded by Bell Atlantic, BellSouth and SBC.

[6] 47 C.F.R 51.501 *et seq.*

[7] *JATO ex parte*, CC Docket 98-141 (May 23, 2000).

for the deployment of Jato's more robust SDSL offering,[8] and will diminish the ability of Jato to efficiently utilize its equipment collocated in ILEC Central Offices nationwide.[9] As a result, the Commission should require ILECs to continue to make spare copper loops available to requesting carriers, despite any ILEC plans to transition their own operations to a fiber/copper infrastructure. Doing so will promote the continued expansion of xDSL service reach and technological diversity in the marketplace.

IV. THE COMMISSION'S DECLARATORY RULING SHOULD SET *PRIMA FACIE* FEDERAL PENALTIES FOR ILEC NONCOMPLIANCE

Jato submits that federal penalties, certain in their application and enforcement, are an appropriate means to ensure compliance with the Commission's previously adopted rules. In order to be effective, these penalties must be of sufficient severity to counter the powerful market forces motivating ILEC noncompliance. When one considers the explosive growth and nearly limitless possibilities of the market for xDSL and other advanced services, it becomes evident that the penalties must be quite substantial to discourage ILEC leveraging of these markets.

Jato also asks that the Commission consider the fact that the next several months will be critical to the deployment of advanced services throughout the United States.

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[8] ADSL presently has an effective reach of 12,000 feet or less from the Central Office. SDSL, on the other hand, is able to reach customers on copper loops up to 30,000 feet in length. As a result, SDSL represents an excellent means of providing broadband connectivity to a larger group of Americans. Due to its unique characteristics, especially the ability to send and receive data at the same speed, SDSL will remain an important technology following the deployment of ILEC RTs.

[9] Were Jato forced to utilize RTs, this transition would not only represent an inefficient use of its SDSL technology, but would render its central office collocations, procured at great expense, nearly useless. Instead, Jato would be required to start the collocation process virtually from scratch, applying for space in smaller and more numerous RTs to serve its current and future customers. Inevitably, space in these RTs will be scarce, and even where available, the additional cost of RT collocation, with no appreciable advantage over traditional Central Office collocation in many cases, would severely inhibit Jato's ability to compete in the xDSL market.

Should ILECs succeed in continuing their campaigns to delay their competitors, customer end-users will gradually lose their confidence in the ability of competitive carriers to serve them. If the reputation of competitive carriers is allowed to be so damaged, solely at the hands of those seeking to retain their monopoly power, the market for advanced services will be severely, if not permanently crippled. It is, therefore, imperative that the Commission act decisively to protect the emerging market for these services.

In order to promote the stated goal of the Telecommunications Act of 1996 that advanced services be made available to all Americans[10], Jato respectfully requests that the Commission issue a declaratory ruling clarifying, construing and, as necessary, modifying its rules applicable to the provisioning of UNE loops, as contemplated by the ALTS Petition.

Respectfully submitted,

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[10] 47 U.S.C. § 706.

CERTIFICATE OF SERVICE

I, Charles M. Hines III, hereby certify that a true and correct copy of the foregoing **"Comments of Jato Communications, Inc. Re: ALTS Petition for Declaratory Ruling: Broadband Loop Provisioning – CC Docket Nos. 98-147, 96-98, 98-141, NSD-L-0048, DA 00-891"** was delivered by first-class mail or hand delivery this 23rd day of June, 2000 to the individuals on the following list:

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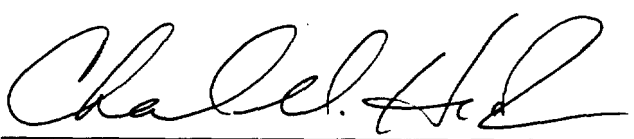

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